

Claimant was employed by Respondent from January 27, 2019, through July 20, 2019, as a truck driver. Claimant drove a tractor-trailer rig, delivering products to Dillons stores in Kansas and Missouri. Claimant's work required him to connect the trailer to the tractor, drive the tractor-trailer to stores, and assist in unloading product from the trailers.

Claimant initially filed an Application for Benefits alleging he sustained injuries to his head, back and right leg from an accident arising out of and in the course of his employment with Respondent on July 20, 2019. Following Claimant's deposition, he filed an amended Application for Benefits including an alleged series of accidental injuries or repetitive trauma from February 1, 2019, through August 2, 2019. Finally, on the morning of the Preliminary Hearing held on March 3, 2020, Claimant filed a second amended Application for Benefits to include additional accidents occurring in April 2019 and in May or June 2019.

Claimant alleges in April 2019 he was at a Dillons store where he helped unload the trailer. Claimant could not recall the date of the accident. Claimant testified he was moving a pallet, his feet slipped and he fell on his back. Claimant continued working. Claimant testified he reported the fall to one of Respondent's dispatchers and completed a written accident report. Claimant testified at the Preliminary Hearing he developed back pain three to four days after the fall. Claimant never requested medical treatment from Respondent.

Claimant sought medical treatment from his family physician at Hutchinson Clinic on May 8, 2019. Claimant testified he sought treatment due to the injuries he sustained in April 2019. The records from Hutchinson Clinic state Claimant reported stabbing nerve pain radiating down his leg the last several days. There is no record of the fall in the trailer while working. The record indicates Claimant reported he was a truck driver and sat a "length of time", but there is no indication Claimant was hurt while working. Claimant was prescribed medication and home exercises. There is no record Claimant's work status was addressed.

Claimant continued performing his usual work. According to Claimant, in May or June 2019, he was moving a pallet of milk in a trailer he was hauling, and Claimant slipped and fell. Again, Claimant could not recall the specific date of accident. Claimant testified he did not experience pain or symptoms at the time of the fall and continued working. Claimant also testified he reported the incident to the dispatcher and later completed a written accident report. Claimant did not request medical treatment. Claimant continued performing his normal job duties.

Claimant did not receive additional medical treatment until he went to Hutchinson Clinic on July 19, 2019. According to Hutchinson Clinic's records, Claimant reported right-sided low back pain and righted-sided sciatica for six to eight months. There was no record of Claimant reporting the falls of April 2019 or May/June 2019. Claimant testified he did not recall saying the symptoms were present for six to eight months. The records of Hutchinson Clinic also state Claimant felt his pain was aggravated by driving a truck and his pain was worsened with activity. X-rays of the right hip were interpreted by the radiologist as normal, and x-rays of the lumbar spine were interpreted as showing moderate to severe narrowing at L4-5 and L5-S1, spondylolisthesis at L5-S1, and degenerative discs

at the lower two segments. Claimant was prescribed medication and home exercises. Claimant's work status was not addressed.

According to Claimant, on July 20, 2019, he was transporting a loaded trailer in Missouri. As Claimant was driving through a curve, he saw headlights from an oncoming car he thought was in his lane. Claimant testified he swerved to miss the car, went into a ditch and rolled over. The Missouri Highway Patrol completed an accident report. Claimant testified he was bleeding from his hand, shoulder and head, but did not believe he was severely hurt. Claimant was not transported to a hospital and did not receive medical treatment that day. Instead, Claimant was transported back to Respondent's location by a coworker. Claimant did not request medical treatment. Claimant did not immediately return to work for Respondent because he previously scheduled time off for vacation.

Claimant attended a physical therapy appointment at Hutchinson Clinic on July 23, 2019. The records of that appointment contain a history of reported low back pain affecting his ability to stand, walk and climb stairs off and on for eight months, with pain running down the right leg when working hard for the past two to three months. Claimant stated he was improving with medication, but he lost his medication in a recent motor vehicle accident. There is no record of Claimant reporting injuries or worsening symptoms due to the motor vehicle accident. Claimant denied feeling numbness or tingling in either lower extremity. Claimant underwent physical therapy and received home exercise instructions.

Claimant went to Las Vegas with his family on his vacation. Claimant visited family. Claimant testified he spent most of the time resting on a couch due to back pain, sciatic nerve pain running down the right leg and intermittent headaches. It does not appear Claimant received medical treatment while he was on vacation. Claimant denied sustaining any injuries while on vacation. Claimant returned home around August 1, 2019.

On August 2, 2019, Claimant contacted Respondent and asked about returning to work because his vacation ended. Claimant was told he was terminated because he was involved in a motor vehicle accident. Claimant testified after his conversation with Respondent, he was at home walking to his workshop and felt something in his back shift, followed by a severe onset of pain causing him to fall to his knees. Claimant went to Hutchinson Clinic for treatment.

According to Hutchinson Clinic's records of August 2, 2019, Claimant reported on July 20 he was driving a semi around a curve and had to swerve off the road. Claimant stated he experienced severe pain in his right hip and low back running down the leg since the accident. Claimant said his current pain was excruciating. Claimant was referred to the hospital.

The records from Hutchinson Regional Medical Center Emergency Department of August 2, 2019, state Claimant reported right hip pain and swelling and low back pain. Claimant said his pain was ongoing since he was involved in a motor vehicle accident two

weeks before, followed by the pulling sensation and sudden onset of pain at home. A CT scan of the right hip was interpreted as showing no acute changes, and a CT scan of the lumbar spine was interpreted as showing chronic grade 2 spondylolisthesis and significant bilateral foraminal stenosis at L4-5 and L5-S1. Claimant was told to follow with his primary care physician.

Claimant returned to his family physician at Hutchinson Clinic on August 5, 2019. The records of Hutchinson Clinic indicate Claimant gave a history of the motor vehicle accident, and stated the pain in his back and neck was present initially but not bad, but he had a sudden onset of symptoms at home on August 2, 2019. The CT of the right hip was interpreted as negative and the lumbar spine CT was interpreted as showing spondylolisthesis at L4-5 and L5-S1. Claimant was referred to the walk-in clinic at Hutchinson Clinic for further treatment because Claimant reported a work-related accident. Claimant was taken off work.

From August 7 through August 19, 2019, Claimant was seen at the walk-in clinic at Hutchinson Clinic for his low back. The treatment records indicate a history of low back pain and right-sided radiculopathy following the motor vehicle accident. An MRI and physical therapy was recommended. Claimant returned to the walk-in clinic on August 26, 2019, and reported he felt a sudden worsening of his symptoms on August 22. Claimant could not recall an event causing the worsening.

Several inconsistencies between Claimant's direct examination testimony and his prior deposition testimony were raised during cross-examination at the preliminary hearing. Claimant denied having prior back problems at his deposition, but admitted he was seen by a chiropractor fifteen to twenty years before. Claimant had no explanation for why he did not mention the April 2019 or May/June 2019 falls to his family physician at Hutchinson Clinic. Claimant testified in his deposition he did not know the falls caused his injuries until he was seen at the emergency room at Hutchinson Regional Medical Center, but those records contain no history of the April 2019 or May/June 2019 falls. Claimant admitted in his deposition he testified the symptoms from the April 2019 fall resolved, and he testified he did not sustain injuries in the May/June 2019 fall. Finally, Claimant admitted he testified in his deposition he only sustained an injury to the low back from the motor vehicle accident of July 20, 2019.

Claimant wanted additional medical treatment and temporary total disability compensation, and the preliminary hearing took place on March 3, 2020. Following Claimant's testimony at the preliminary hearing, ALJ Klein denied Respondent's request to leave the record open. ALJ Klein subsequently issued the Order dated April 20, 2020. ALJ Klein found Claimant was terminated for cause and Claimant failed to present medical evidence he was taken off work, and the request for temporary total disability compensation was denied. ALJ Klein also found Claimant failed to prove he sustained a compensable back injury from any of the claimed events, and any injuries to other affected body parts resolved. Claimant's request for medical treatment was denied. Claimant appeals.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues his testimony proves he sustained compensable injuries and he is entitled to workers' compensation benefits. Respondent argues Claimant lacks credibility, as evidenced by his inconsistent testimony and histories, and Claimant failed to meet his burden of proof.

It is the intent of the Legislature the Workers Compensation Act be liberally construed only for the purpose of bringing employers and employees within the provisions of the Act.¹ The provisions of the Workers Compensation Act shall be applied impartially to all parties.² The burden of proof shall be on the employee to establish the right to an award of compensation, and to prove the various conditions on which the right to compensation depends.³ Claimant alleges, over three Applications for Benefits, he sustained personal injuries from a series of accidents or repetitive trauma and three acute events. The Board addresses Claimant's alleged events in turn.

First, Claimant failed to meet his burden of proving he sustained personal injury either from a series of accidents or from repetitive trauma arising out of and in the course of his employment with Respondent from February 1, 2019, through August 2, 2019. An injury by repetitive trauma shall be compensable only if employment exposes the worker to an increased risk of injury, the employment is the prevailing factor in causing the repetitive trauma and the repetitive trauma is the prevailing factor in causing the medical condition.⁴ Moreover, the repetitive nature of the injury must be demonstrated by diagnostic or clinical tests.⁵ Claimant did not testify he sustained symptoms or injuries from a series of accidents or from work-related repetitive trauma from February 1, 2019, through August 2, 2019, in his deposition or during the preliminary hearing. The medical records from Hutchinson Clinic do not document a series of accidents or repetitive trauma, and there are no objective tests confirming a repetitive injury. The May 8 Hutchinson Clinic record indicates Claimant sat for a length of time, but there is nothing indicating Claimant sustained symptoms or injuries on account of sitting. Claimant stated on July 19 driving a truck aggravated his pain, but a mere aggravation does not constitute a compensable injury.⁶ Claimant failed to prove he sustained an injury from a series or from repetitive

¹ See K.S.A. 44-501b(a).

² See *id.*

³ See K.S.A. 44-501b(c).

⁴ See K.S.A. 44-508(f)(2).

⁵ See K.S.A. 44-508(e).

⁶ See K.S.A. 44-508(f)(2).

trauma arising out of and in the course of his employment from February 1, 2019, through August 2, 2019.

Second, Claimant failed to meet his burden of proving he sustained personal injury from an accident arising out of and in the course of his employment with Respondent in April 2019. To be compensable, an accident must be identifiable by time and place of occurrence, produce at the time symptoms of an injury and occur during a single work shift.⁷ The accident must be the prevailing factor in causing the injury, and “prevailing factor” is defined as the primary factor compared to any other factor, based on consideration of all relevant evidence.⁸ An accidental injury is not compensable if work is a triggering factor or if the injury solely aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.⁹ Here, Claimant testified at the preliminary hearing he sustained a back injury from a slip and fall necessitating medical treatment starting on May 8, 2019, and continuing. In his deposition, however, Claimant testified the problems from the April 2019 fall resolved. The medical records from Hutchinson Clinic do not mention a work-related fall occurring in April 2019. The medical records from Hutchinson Clinic dated July 19 only document a six to eight month history of low back pain and right-sided sciatica, and Claimant could not explain the discrepancy. Claimant’s testimony, alone, is contradictory and is not credible. None of the medical records indicate the April 2019 fall was the prevailing factor causing Claimant’s medical condition and resulting need for treatment or temporary disability. Claimant failed to prove a compensable event occurred in April 2019.

Third, Claimant failed to meet his burden of proving he sustained compensable injuries from a fall arising out of and in the course of his employment with Respondent in May or June 2019. First, it is unusual Claimant cannot specify the month he sustained an injury of sufficient severity to cause residual low back and right-sided radicular symptoms. Second, Claimant testified at his deposition he did not sustain an injury from the fall of May or June 2019. The medical records from Hutchinson Clinic do not document a fall in May or June 2019 or symptoms of an injury from the fall. Rather, the records indicate a six to eight month history of low back pain and right-sided radicular symptoms. Again, Claimant’s testimony is contradictory and is not credible. None of the medical records establish the alleged fall of May or June 2019 occurred or was the prevailing factor causing an injury, medical condition requiring treatment or resulting temporary disability. Claimant failed to meet his burden of proving a compensable event occurred in May or June 2019.

Finally, Claimant failed to meet his burden of proving he sustained a compensable back injury due to the motor vehicle accident of July 20, 2019. At the preliminary hearing,

⁷ See K.S.A. 44-508(d).

⁸ See K.S.A. 44-508(d),(g).

⁹ See K.S.A. 44-508(f)(2).

Claimant testified he sustained lacerations of the head, shoulder, and hand, which resolved without further medical treatment. Claimant testified he did not feel severely hurt immediately after the motor vehicle accident, and Claimant was not transported to a health care provider for examination or treatment. Indeed, Claimant received no treatment until he attended a physical therapy appointment previously recommended by his family physician, who thought Claimant had a non-work-related back problem, on July 23, 2019. At the physical therapy appointment, Claimant did not report injuries from the motor vehicle accident of three days before, but reported he lost his medication as a result of the accident. Claimant traveled to Las Vegas with his family, and was ready to resume his work for Respondent on August 2, 2019. Coincidentally, after Claimant was told by Respondent he was terminated, he felt a pulling sensation and a sudden onset of excruciating low back pain at home. Claimant reported to his family physician severe, ongoing pain he did not report to the physical therapist on July 23. Claimant's testimony is contradicted by the history he reported to Hutchinson Clinic, and, again, is not credible evidence alone. The records of the Missouri Highway Patrol and the records of Hutchinson Clinic from July 23 do not support Claimant's allegations he injured his back in the motor vehicle accident. Claimant did not meet his burden of proving he sustained a compensable low back injury from the motor vehicle accident of July 20, 2019.

In conclusion, Claimant failed to prove by the greater weight of the credible evidence he sustained injuries to his back or right hip from a series of accidents or repetitive trauma from February 1, 2019, through August 2, 2019; from an accident occurring in April 2019; from an accident occurring in May or June 2019; or from the motor vehicle accident of July 20, 2019. As a result, the Order issued by ALJ Klein dated April 20, 2020, should be affirmed.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.¹⁰ Moreover, this review of a preliminary order was determined by one Board Member, as permitted by the Act.¹¹

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Order of Administrative Law Judge Thomas Klein dated April 20, 2020, is affirmed.

IT IS SO ORDERED.

Dated this 7th day of July, 2020.

¹⁰ K.S.A. 44-534a.

¹¹ See K.S.A. 44-551(l)(2)(A).

WILLIAM G. BELDEN
APPEALS BOARD MEMBER

c: Via OSCAR

Melinda G. Young
Timothy A. Emerson
Hon. Thomas Klein